



**THE CITY OF NEW YORK
LAW DEPARTMENT**

100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

BRIAN FRANCOLLA
Assistant Corporation Counsel
Tel.: (212) 788-0988
Fax: (212) 788-9776

May 17, 2011

BY ECF

Honorable Brian M. Cogan
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Malik Fryar v. The City of New York, et al., 10 CV 5879 (BMC)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter on behalf of defendants City of New York, Police Officer Zhen, Police Officer Kokoruda and Police Officer Kalman. In that capacity, I write to advise the Court as to the status of this case.

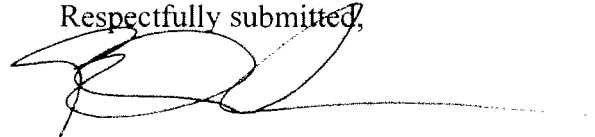
Pursuant to the parties' proposed Scheduling Order/Civil Case Management Plan, which was adopted by the Court on February 4, 2011, the last day for filing dispositive motions is today. In that regard, I write to advise the Court that defendants will not be filing any dispositive motions and are prepared to proceed to trial. Specifically, defendants concede that based upon plaintiff's version of events, his claims for false arrest, excessive force and failure to intervene, as well as all corresponding state law claims, are not amenable to dismissal on summary judgment.

Additionally, plaintiff's counsel, Afsaan Saleem, Esq., advised me via email today that plaintiff agrees to withdraw his claims of Municipal Liability, First Amendment Retaliation and Denial of a Constitutional Right to Fair Trial so as to obviate the need for motion practice as the undersigned had previously advised him that we would seek to dismiss those claims on summary judgment. In that regard, a stipulation of dismissal will be submitted to the Court shortly under separate cover in order to formally resolve these claims.

Accordingly, defendants respectfully submit that based upon the representations of plaintiff's counsel described above, we will not be filing a motion for summary judgment.

Thank you for your consideration herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian Francolla', with a long horizontal line extending to the right.

Brian Francolla
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Afsaan Saleem, Esq. (by ECF)
Harvis & Saleem LLP
305 Broadway, 14th Floor
New York, New York 10007